

# South Carolina Department of Insurance

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## BULLETIN NUMBER 2010-03

TO: All Insurers, Producers and Brokers Transacting the Business of Automobile Insurance in the State of South Carolina

FROM: Scott H. Richardson, CPCU  
Director 

SUBJECT: 2008 S.C. Act No. 201 (R. 234, H. 3496)

DATE: March 24, 2010

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### I. PURPOSE AND SCOPE OF THIS BULLETIN

The purpose of this bulletin is to remind insurers of provisions of 2008 S.C. Act No. 201, effective February 10, 2009, that relate to automobile insurance. It has come to the Department's attention that some insurers may not be in compliance with the provisions in S.C. Code § 56-5-2951(N) restricting an increase in premiums and prohibiting cancellation of automobile insurance policies under certain circumstances. That subsection provides:

An insurer may not increase premiums on, add surcharges to, or cancel the automobile insurance of a person charged with a violation of Section 56-1-286, 56-5-2930, 56-5-2933, or 56-5-2945, or another law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or any other drug based solely on the violation unless he is convicted of the violation.

Insurers should also be aware of the provisions of S.C. Code § 56-1-286(V), which remained unchanged by Act 201:

Notwithstanding any other provision of law, no suspension imposed pursuant to this section is counted as a demerit or result in any insurance penalty for automobile insurance purposes if at the time he was stopped, the person whose license is suspended had an alcohol concentration that was less than eight one-hundredths of one percent.

### II. QUESTIONS

A copy of Act 201 is attached. Questions regarding this Bulletin should be submitted in writing to Carla Griffin, Manager of Market Services, via postal mail or by E-mail to [cgriffin@doi.sc.gov](mailto:cgriffin@doi.sc.gov).

Bulletins are the method by which the Director of Insurance formally communicates with persons and entities regulated by the Department. Bulletins are departmental interpretations of South Carolina insurance laws and regulations and provide guidance on the Department's enforcement approach. Bulletins do not provide legal advice. Readers should consult applicable statutes and regulations or contact an attorney for legal advice or for additional information on the impact of that legislation on their specific situation.

**South Carolina General Assembly**  
117th Session, 2007-2008

**A201, R234, H3496**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. G.M. Smith, Harrison, Cotty, Shoopman, Duncan, Davenport, Leach, Haley, Huggins, McLeod, G.R. Smith, F.N. Smith, Allen, Bales, Ballentine, Barfield, Bingham, Bowen, Brady, Cato, Ceips, Chalk, Chellis, Clemmons, Cooper, Crawford, Edge, Frye, Funderburk, Gambrell, Govan, Gullick, Hagood, Hamilton, Hardwick, Harrell, Harvin, Haskins, Herbkersman, Hinson, Hiott, Jefferson, Kirsh, Knight, Littlejohn, Loftis, Lucas, Merrill, Moss, Neilson, Ott, Parks, Pinson, E.H. Pitts, M.A. Pitts, Rice, Sandifer, Scarborough, Scott, Simrill, Skelton, D.C. Smith, J.R. Smith, Spires, Stewart, Talley, Taylor, Toole, Umphlett, Vick, Viers, Walker, Weeks, Whipper, White, Whitmire, Witherspoon and Young  
Document Path: I:\council\bill\swb\5101cm07.doc  
Companion/Similar bill(s): 485

Introduced in the House on February 13, 2007

Introduced in the Senate on May 22, 2007

Last Amended on April 9, 2008

Passed by the General Assembly on April 9, 2008

Governor's Action: April 15, 2008, Signed

Summary: Department of Motor Vehicles

(A201, R234, H3496)

AN ACT TO AMEND SECTION 56-1-10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO DEFINITION OF TERMS WITH REGARD TO THE DEPARTMENT OF MOTOR VEHICLES, SO AS TO REVISE THE DEFINITION OF THE TERMS "OPERATOR", "VEHICLE", AND "DRIVER"; TO AMEND SECTION 56-1-286, AS AMENDED, RELATING TO THE SUSPENSION OF A DRIVER'S LICENSE OR PERMIT, OR THE DENIAL OF THE ISSUANCE OF A LICENSE OR A PERMIT TO A PERSON UNDER THE AGE OF TWENTY-ONE WHO HAS OPERATED A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, SO AS TO DELETE THE TERM "PROBABLE CAUSE TO BELIEVE" AND REPLACE IT WITH THE TERM "REASONABLE SUSPICION", TO DELETE THE TERM "STATE LAW ENFORCEMENT DIVISION" AND REPLACE IT WITH THE TERM "SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY", TO DELETE THE PROVISION THAT REQUIRES THE RECORDING OF THE PERIOD PRIOR TO THE ADMINISTRATION OF A BREATH TEST BY A PRIMARY INVESTIGATING OFFICER, TO PROVIDE THAT A PERSON MUST PAY FOR THE COST OF A BREATH TEST FOR A CONVICTION OF CERTAIN PROVISIONS OF LAW, TO PROVIDE FOR THE DISBURSEMENT OF THESE FUNDS, TO PROVIDE THAT A TEST TO DETERMINE WHETHER A PERSON IS UNDER THE INFLUENCE OF ALCOHOL OR ANOTHER ILLEGAL SUBSTANCE MAY NOT BE TAKEN UNLESS THE TESTING PROCEDURE IS VIDEO RECORDED AND THE PERSON HAS BEEN INFORMED IN A VERBAL AND WRITTEN FORM OF CERTAIN RIGHTS THAT HE POSSESSES, TO DELETE THE TERM "ALCOHOL RESTRICTED LICENSE" AND REPLACE IT WITH THE TERM "ALCOHOL LICENSE", TO MAKE A TECHNICAL CHANGE, TO DELETE THE PROVISION THAT REQUIRES THAT AN ADMINISTRATIVE HEARING MUST BE HELD WITHIN THIRTY DAYS AFTER A REQUEST FOR A HEARING IS RECEIVED BY THE DIVISION OF MOTOR VEHICLE HEARINGS, TO DELETE THE PROVISION THAT REQUIRES THE DIVISION OF MOTOR VEHICLE HEARINGS TO ISSUE AN ORDER THAT CONTAINS THE REASONS WHY AN ADMINISTRATIVE HEARING WAS NOT HELD AND TO REINSTATE A PERSON'S PRIVILEGE TO OPERATE

A VEHICLE UNDER CERTAIN CIRCUMSTANCES, TO REVISE THE SCOPE OF AN ADMINISTRATIVE HEARING, AND TO DELETE THE PROVISION THAT REQUIRES THE DIVISION OF MOTOR VEHICLE HEARINGS TO ISSUE ITS WRITTEN ORDERS WITHIN THIRTY DAYS AFTER THE CONCLUSION OF AN ADMINISTRATIVE HEARING; TO AMEND SECTION 56-1-748, RELATING TO PERSONS WHO ARE INELIGIBLE TO RECEIVE A SPECIAL RESTRICTED DRIVER'S LICENSE, SO AS TO PROVIDE THAT A PERSON WHO IS ISSUED A RESTRICTED LICENSE PURSUANT TO SECTION 56-5-2951 MAY NOT OBTAIN A SPECIAL RESTRICTED DRIVER'S LICENSE UNDER THIS PROVISION, AND TO DELETE THE TERM "SPECIAL RESTRICTED DRIVER'S LICENSE" AND TO REPLACE IT WITH THE TERM "RESTRICTED DRIVER'S LICENSE"; TO AMEND SECTION 56-5-2930, RELATING TO THE UNLAWFUL OPERATION OF A MOTOR VEHICLE BY A PERSON UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, SO AS TO MAKE TECHNICAL CHANGES, TO PROVIDE THAT A PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS GUILTY OF THE OFFENSE OF DRIVING UNDER THE INFLUENCE AND TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS SECTION, TO PROVIDE FOR THE DISBURSEMENT OF FINES IMPOSED PURSUANT TO THIS SECTION, TO REQUIRE A PERSON WHO VIOLATES THIS SECTION TO ENROLL IN AND SUCCESSFULLY COMPLETE AN ALCOHOL AND DRUG SAFETY ACTION PROGRAM WHOSE COSTS MUST BE BORNE BY THE PERSON, TO PROVIDE THAT A PERSON WHO IS UNABLE TO PAY FOR THE ALCOHOL TREATMENT SERVICES SHALL COMPLETE A COMMUNITY SERVICE PROGRAM, TO PROVIDE THAT A PERSON MAY BE HELD IN CONTEMPT OF COURT FOR FAILURE TO ENROLL IN OR MAKE PROGRESS TOWARD COMPLETING THE PROGRAM, TO PROVIDE THAT A PERSON WHO HAS VIOLATED THIS SECTION ALSO MAY BE PROSECUTED UNDER SECTION 56-5-2933 UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT A PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS ENTITLED TO A JURY TRIAL AND IS AFFORDED THE RIGHT TO CHALLENGE CERTAIN FACTORS AND INTRODUCE CERTAIN TYPES OF EVIDENCE, TO PROVIDE THAT CERTAIN OFFENSES

CONTAINED IN THIS SECTION MAY BE TRIED IN MAGISTRATES COURT, TO PLACE CERTAIN RESPONSIBILITIES UPON THE FINDER OF FACT AND THE JUDGE IN CASES IN WHICH ENHANCED PENALTIES FOR HIGHER LEVELS OF ALCOHOL CONCENTRATION MAY BE APPLICABLE; TO AMEND SECTION 56-5-2933, RELATING TO DRIVING WITH AN UNLAWFUL ALCOHOL CONCENTRATION, SO AS TO REVISE THE PENALTIES FOR A VIOLATION OF THIS SECTION, TO PROVIDE FOR THE DISBURSEMENT OF FINES IMPOSED PURSUANT TO THIS SECTION, TO PROVIDE THAT A PERSON WHO VIOLATES THIS SECTION MUST ENROLL IN AND SUCCESSFULLY COMPLETE AN ALCOHOL AND DRUG SAFETY ACTION PROGRAM, TO PROVIDE THAT A PERSON UNABLE TO PAY FOR THE COST OF THE PROGRAM SHALL PERFORM COMMUNITY SERVICE, TO PROVIDE THAT A PERSON MAY BE HELD IN CONTEMPT OF COURT FOR FAILURE TO ENROLL IN A TREATMENT PROGRAM OR MAKE PROGRESS TOWARD COMPLETING THE PROGRAM, TO REVISE THE CIRCUMSTANCES IN WHICH A PERSON WHO IS CHARGED FOR A VIOLATION OF SECTION 56-5-2930 MAY BE PROSECUTED PURSUANT TO THIS SECTION, TO DELETE THE PROVISION THAT PROVIDES THAT THIS SECTION DOES NOT APPLY TO CASES ARISING OUT OF A STOP AT A TRAFFIC ROADBLOCK OR DRIVER'S LICENSE CHECKPOINT, TO REVISE FACTORS THAT MAY BE CHALLENGED DURING A JURY TRIAL BY A PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION, TO MAKE TECHNICAL CHANGES, TO DELETE THE PROVISION THAT ENTITLES A PERSON CHARGED WITH A VIOLATION OF THIS SECTION CERTAIN JURY INSTRUCTIONS, TO REVISE THE TYPES OF EVIDENCE THAT MAY BE PRESENTED BY A PERSON WHO VIOLATES THIS SECTION, TO REVISE THE TIME PERIOD IN WHICH A PERSON CHARGED WITH A VIOLATION OF THIS SECTION MUST BE GIVEN NOTICE OF INTENT TO PROSECUTE, TO PROVIDE THAT CERTAIN OFFENSES IN THIS SECTION MAY BE TRIED IN MAGISTRATES COURT, AND TO PROVIDE INSTRUCTIONS FOR THE FINDER OF FACT AND JUDGE IN CASES IN WHICH ENHANCED PENALTIES FOR HIGHER LEVELS OF ALCOHOL CONCENTRATION MAY BE APPLICABLE; TO AMEND SECTION 56-5-2934, RELATING TO THE RIGHT TO COMPULSORY PROCESS, SO AS TO

PROVIDE THAT SLED MUST PRODUCE ALL BREATH TESTING SOFTWARE, AND TO DELETE THE PROVISIONS THAT PROVIDE WHEN THE ATTENDANCE AT CERTAIN PROCEEDINGS OF PERSONS CHARGED WITH MAINTENANCE OF BREATH TESTING DEVICES MUST BEGIN, AND THE PROVISIONS THAT REQUIRE AN ARRESTING OFFICER TO INFORM A DEFENDANT OF HIS RIGHT TO ALL HEARINGS PROVIDED BY LAW FOR A VIOLATION OF CERTAIN PROVISIONS THAT MAKE IT ILLEGAL TO OPERATE A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR ANOTHER ILLEGAL SUBSTANCE; TO AMEND SECTION 56-5-2942, RELATING TO THE IMMOBILIZATION OF A MOTOR VEHICLE OWNED BY A PERSON WHO HAS BEEN CONVICTED OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR ANOTHER ILLEGAL SUBSTANCE, SO AS TO DELETE THE TERM "SENTENCING" AND REPLACE IT WITH THE TERM "RECEIPT OF A CONVICTION BY THE DEPARTMENT FROM THE COURT" AND THE TERM "COURT", AND REPLACE IT WITH THE TERM "DEPARTMENT", REVISE THE PROCEDURES IN WHICH VEHICLES THAT BELONG TO A PERSON WHO IS SUBJECT TO THIS PROVISION ARE IDENTIFIED, TO MAKE TECHNICAL CHANGES, TO DELETE THE PROVISION THAT RELATES TO FALSIFYING A REPORT CONCERNING VEHICLES OWNED OR REGISTERED TO A PERSON SUBJECT TO THIS SECTION, TO INCREASE THE FEE THAT MUST BE ASSESSED AGAINST A PERSON FOR EACH VEHICLE SUBJECT TO THIS SECTION, AND TO PROVIDE THAT CERTAIN CONVICTIONS UNDER SECTION 56-5-2933 MUST BE CONSIDERED PRIOR OFFENSES UNDER SECTION 56-5-2930; TO AMEND SECTION 56-5-2945, RELATING TO THE OFFENSE OF CAUSING GREAT BODILY INJURY OR DEATH BY OPERATING A VEHICLE WHILE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL, SO AS TO MAKE TECHNICAL CHANGES, TO DELETE THE TERM "FELONY" AND REPLACE IT WITH THE TERM "FELONY DRIVING UNDER THE INFLUENCE", AND TO REVISE THE PENALTY PROVISIONS; TO AMEND SECTION 56-5-2950, RELATING TO A DRIVER'S IMPLIED CONSENT TO TESTING FOR ALCOHOL OR DRUGS, SO AS TO MAKE TECHNICAL CHANGES, TO PROVIDE WHEN BREATH SAMPLES MUST BE COLLECTED UNDER THIS PROVISION,

TO DELETE THE PROVISION THAT PROVIDES THAT AN OFFICER MAY NOT REQUIRE ADDITIONAL TESTS OF A PERSON UNDER CERTAIN CIRCUMSTANCES, TO DELETE THE TERM "DEPARTMENT OF PUBLIC SAFETY" AND REPLACE IT WITH THE TERM "SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY", TO REVISE THE PROVISIONS THAT PROVIDE THE PROCEDURES FOR ADMINISTERING BREATH TESTS OR OBTAINING SAMPLES, TO REVISE THE INFORMATION THAT A PERSON CHARGED WITH VIOLATING THIS PROVISION MUST BE GIVEN, TO PROVIDE THE CIRCUMSTANCES IN WHICH A PERSON MUST PAY FOR THE COST OF TESTS PERFORMED UNDER THIS SECTION AND PROVIDE FOR THE DISBURSEMENT OF THESE MONIES, TO DELETE THE PROVISION THAT PROVIDES THAT A CERTAIN LEVEL OF ALCOHOL CONCENTRATION IS A VIOLATION OF SECTION 56-5-2933, AND TO REVISE THE CIRCUMSTANCES IN WHICH CERTAIN EVIDENCE MAY BE EXCLUDED IN A PROCEEDING THAT OCCURS UNDER THIS SECTION; TO AMEND SECTION 56-5-2951, AS AMENDED, RELATING TO THE SUSPENSION OF A PERSON'S PRIVILEGE TO OPERATE A MOTOR VEHICLE, SO AS TO DELETE THE TERM "ALCOHOL RESTRICTED LICENSE" AND REPLACE IT WITH THE TERM "ALCOHOL LICENSE", TO DELETE THE TERM "SPECIAL RESTRICTED LICENSE" AND REPLACE IT WITH THE TERM "RESTRICTED LICENSE", TO REVISE THE PERIOD IN WHICH AN ADMINISTRATIVE HEARING MUST BE HELD, TO DELETE THE PROVISION THAT CONTAINS THE DUTIES OF THE DIVISION OF MOTOR VEHICLE HEARINGS WHEN IT FAILS TO HOLD CERTAIN HEARINGS IN A TIMELY MANNER, TO REVISE THE SCOPE OF A HEARING HELD UNDER THIS SECTION, TO DELETE THE PROVISION THAT PROVIDES A DEADLINE FOR THE ISSUANCE OF AN ORDER BY THE DIVISION OF MOTOR VEHICLE HEARINGS, TO INCREASE THE PERIOD OF TIME A PERSON'S PRIVILEGE TO DRIVE MAY BE SUSPENDED UNDER THIS PROVISION, TO PROVIDE THAT AN INSURER MAY NOT CANCEL THE AUTOMOBILE INSURANCE OF A PERSON WHO IS CHARGED WITH CERTAIN OFFENSES UNDER THIS SECTION, AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 56-5-2953, RELATING TO THE VIDEOTAPING OF A PERSON CHARGED WITH DRIVING

UNDER THE INFLUENCE OF ALCOHOL OR ANOTHER ILLEGAL SUBSTANCE AT THE INCIDENT SITE AND THE BREATH TESTING SITE, SO AS TO MAKE THE TECHNICAL CHANGES, AND REVISE THE PROCEDURE THAT MUST BE FOLLOWED WHEN AN INCIDENT SITE AND BREATH TEST SITE ARE VIDEO RECORDED; TO AMEND SECTION 56-5-2954, RELATING TO BREATH TESTING SITES, SO AS TO PROVIDE THAT CERTAIN RECORDS CONCERNING OPERATIONS AT A BREATH TEST SITE MUST BE ELECTRONICALLY RECORDED AND MADE AVAILABLE TO SLED; TO AMEND SECTION 1-23-600, AS AMENDED, RELATING TO CERTAIN HEARINGS AND PROCEEDINGS BEFORE THE ADMINISTRATIVE LAW COURT, SO AS TO PROVIDE THAT THE STANDARD OF PROOF IN A CONTESTED CASE IS BY A PREPONDERANCE OF THE EVIDENCE, TO DELETE THE TERM "PETITION FOR JUDICIAL REVIEW" AND TO DELETE THE TERM "FILED" AND REPLACE IT WITH THE TERM "APPEALED"; TO AMEND SECTION 1-23-660, AS AMENDED, RELATING TO THE DIVISION OF MOTOR VEHICLE HEARINGS, SO AS TO DELETE THE PROVISION THAT PROVIDES FOR THE HIRING OF A LAW CLERK, THE PROVISION THAT RELATES TO THE STATE BUDGET AND CONTROL BOARD'S ROLE IN CREATING THE DIVISION OF MOTOR VEHICLE HEARINGS, THE PROVISION THAT REQUIRES THE DEPARTMENT OF MOTOR VEHICLES TO PROVIDE LOCATIONS FOR HEARINGS, AND THE PROVISION THAT MAKES THE CHIEF JUDGE RESPONSIBLE FOR ADJUDICATING CERTAIN CASES, TO PROVIDE THAT THE STATE ETHICS COMMISSION IS RESPONSIBLE FOR ENFORCEMENT AND ADMINISTRATION OF RULES AND ISSUANCE OF CERTAIN OPINIONS REGARDING ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS; TO AMEND SECTION 56-1-1090, AS AMENDED, RELATING TO THE ISSUANCE OF DRIVER'S LICENSES TO HABITUAL OFFENDERS, SO AS TO DELETE THE TERM "MAGISTRATE" AND REPLACE IT WITH THE TERM "OFFICER OF THE DIVISION OF MOTOR VEHICLE HEARINGS", TO MAKE A TECHNICAL CHANGE, AND TO PROVIDE THAT THE DEPARTMENT OF MOTOR VEHICLES MUST PROMULGATE CERTAIN REGULATIONS UNDER THIS SECTION; TO AMEND SECTION 56-5-2949, RELATING TO POLICIES, PROCEDURES, AND REGULATIONS ON THE



SLED INTERNET WEB SITE CONCERNING BREATH ALCOHOL TESTING, BREATH SITE VIDEOTAPING, AND IGNITION INTERLOCK, SO AS TO DELETE THE TERMS "VIDEOTAPING" AND "IGNITION INTERLOCK", AND TO REPLACE THEM WITH THE TERM "VIDEO RECORDING"; TO AMEND SECTION 17-22-50, AS AMENDED, RELATING TO PERSONS WHO MUST NOT BE CONSIDERED FOR INTERVENTION, SO AS TO DELETE THE TERM "INTOXICATING LIQUOR OR DRUGS" AND TO INCLUDE THE TERM "DRIVING WITH AN UNLAWFUL ALCOHOL CONCENTRATION"; TO AMEND SECTION 56-1-365, RELATING TO THE SURRENDER OF A DRIVER'S LICENSE, SO AS TO INCREASE THE PERIOD OF TIME THAT A PERSON WHO HOLDS A CERTIFICATE MAY OPERATE A MOTOR VEHICLE; TO AMEND SECTION 56-1-430, RELATING TO THE APPEAL FROM A CONVICTION OF AN OFFENSE THAT MAKES THE SUSPENSION OR REVOCATION OF A DRIVER'S LICENSE MANDATORY, SO AS TO PROVIDE THAT AN APPEAL TAKEN FROM THE CONVICTION ACTS AS A SUPERSEDEAS AND PRECLUDES FOR SIX MONTHS FROM THE DATE OF CONVICTION A SUSPENSION OR REVOCATION; TO AMEND SECTION 56-5-2947, RELATING TO THE OFFENSE OF CHILD ENDANGERMENT, SO AS TO PROVIDE THAT A PERSON WHO VIOLATES SECTION 56-5-2933 IS GUILTY OF CHILD ENDANGERMENT; AND TO REPEAL SECTIONS 56-5-2940 AND 56-5-3000 RELATING TO PENALTIES FOR OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS, AND THE PUBLICATION OF THE NAMES OF PERSONS WHOSE DRIVER'S LICENSES HAVE BEEN SUSPENDED.

Be it enacted by the General Assembly of the State of South Carolina:

#### **Definitions**

SECTION 1. Section 56-1-10 of the 1976 Code, as last amended by Act 381 of 2006, is further amended to read:

"Section 56-1-10. For the purpose of this title, unless otherwise indicated, the following words, phrases, and terms are defined as follows:

(1) 'Driver' means every person who drives or is in actual physical control of a vehicle.

(2) 'Operator' means every person who drives or is in actual physical control of a motor vehicle or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(3) 'Owner' means a person, other than a lienholder, having the property or title to a vehicle. The term includes a person entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security.

(4) 'Department' means the Department of Motor Vehicles when the term refers to the duties, functions, and responsibilities of the former Motor Vehicle Division of the Department of Public Safety and means the Department of Public Safety otherwise and in Section 56-3-840.

(5) 'State' means a state, territory, or possession of the United States and the District of Columbia.

(6) 'Highway' means the entire width between the boundary lines of every way publicly maintained when any part of it is open to the use of the public for purposes of vehicular travel.

(7) 'Motor vehicle' means every vehicle which is self-propelled, and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(8) 'Motorcycle' means every motor vehicle having no more than two permanent functional wheels in contact with the ground or trailer and having a saddle for the use of the rider, but excluding a tractor.

(9) 'Nonresident' means every person who is not a resident of this State.

(10) 'Nonresident's operating privilege' means the privilege conferred upon a nonresident by the laws of this State pertaining to the operation by the person of a motor vehicle, or the use of a vehicle owned by the person, in this State.

(11) 'Conviction' includes the entry of any plea of guilty, the entry of any plea of nolo contendere, and the forfeiture of any bail or collateral deposited to secure a defendant's appearance in court.

(12) 'Cancellation of driver's license' means the annulment or termination by formal action of the Department of Motor Vehicles of a person's driver's license because of some error or defect in the license or because the licensee is no longer entitled to the license; the cancellation of a license is without prejudice, and application for a new license may be made at any time after the cancellation.

(13) 'Revocation of driver's license' means the termination by formal action of the Department of Motor Vehicles of a person's driver's license or privilege to operate a motor vehicle on the public

highways, which privilege to operate is not subject to renewal or restoration, except that an application for a new license may be presented and acted upon by the department.

(14) 'Suspension of driver's license' means the temporary withdrawal by formal action of the Department of Motor Vehicles of a person's driver's license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be as specifically designated.

(15) 'Automotive three-wheel vehicle' means every motor vehicle having no more than three permanent functional wheels in contact with the ground, having a bench seat for the use of the operator, and having an automotive type steering device, but excluding a tractor or motorcycle three-wheel vehicle.

(16) 'Alcohol' means a substance containing any form of alcohol including, but not limited to, ethanol, methanol, propanol, and isopropanol.

(17) 'Alcohol concentration' means:

(a) the number of grams of alcohol for each one hundred milliliters of blood by weight; or

(b) as determined by the South Carolina Law Enforcement Division for other bodily fluids.

(18) 'Motorcycle three-wheel vehicle' means every motor vehicle having no more than three permanent functional wheels in contact with the ground to include motorcycles with detachable side cars, having a saddle type seat for the operator, and having handlebars or a motorcycle type steering device but excluding a tractor or automotive three-wheel vehicle.

(19) 'Low speed vehicle' or 'LSV' means a four-wheeled motor vehicle, other than an all terrain vehicle, whose speed attainable in one mile is more than twenty miles an hour and not more than twenty-five miles an hour on a paved, level surface.

(20) 'All terrain vehicle' or 'ATV' means a motor vehicle measuring fifty inches or less in width, designed to travel on three or more wheels and designed primarily for off-road recreational use, but not including farm tractors or equipment, construction equipment, forestry vehicles, or lawn and grounds maintenance vehicles.

(21) 'Operator' or 'driver' means a person who is in actual physical control of a motor vehicle.

(22) 'Person' means every natural person, firm, partnership, trust, company, firm, association, or corporation. Where the term 'person' is used in connection with the registration of a motor vehicle, it includes any corporation, association, partnership, trust, company, firm, or other aggregation of individuals which owns or controls the motor vehicle as

actual owner, or for the purpose of sale or for renting, as agent, salesperson, or otherwise.

(23) 'Division of Motor Vehicle Hearings' means the Division of Motor Vehicle Hearings created by Section 1-23-660. The Division of Motor Vehicle Hearings conducts all hearings or administrative hearings arising from department actions.

(24) 'Administrative hearing' means a 'contested case hearing' as defined in Section 1-23-310. It is a hearing conducted pursuant to the South Carolina Administrative Procedures Act."

### **Suspension of a license or permit**

SECTION 2. Section 56-1-286 of the 1976 Code, as last amended by Act 381 of 2006, is further amended to read:

"Section 56-1-286. (A) The Department of Motor Vehicles must suspend the driver's license, permit, or nonresident operating privilege of, or deny the issuance of a license or permit to a person under the age of twenty-one who drives a motor vehicle and has an alcohol concentration of two one-hundredths of one percent or more. In cases in which a law enforcement officer initiates suspension proceedings for a violation of this section, the officer has elected to pursue a violation of this section and is subsequently prohibited from prosecuting the person for a violation of Section 20-7-8920, 20-7-8925, 56-5-2930, or 56-5-2933, arising from the same incident.

(B) A person under the age of twenty-one who drives a motor vehicle in this State is considered to have given consent to chemical tests of his breath or blood for the purpose of determining the presence of alcohol.

(C) A law enforcement officer who has arrested a person under the age of twenty-one for a violation of Chapter 5 of this title (Uniform Act Regulating Traffic on Highways), or any other traffic offense established by a political subdivision of this State, and has reasonable suspicion that the person under the age of twenty-one has consumed alcoholic beverages and driven a motor vehicle may order the testing of the person arrested to determine the person's alcohol concentration.

A law enforcement officer may detain and order the testing of a person to determine the person's alcohol concentration if the officer has reasonable suspicion that a motor vehicle is being driven by a person under the age of twenty-one who has consumed alcoholic beverages.

(D) A test must be administered at the direction of the primary investigating law enforcement officer. At the direction of the officer, the person first must be offered a breath test to determine the person's

alcohol concentration. If the person physically is unable to provide an acceptable breath sample because he has an injured mouth or is unconscious or dead, or for any other reason considered acceptable by licensed medical personnel, a blood sample may be taken. The breath test must be administered by a person trained and certified by the South Carolina Criminal Justice Academy, pursuant to SLED policies. The primary investigating officer may administer the test. Blood samples must be obtained by physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, or other medical personnel trained to obtain these samples in a licensed medical facility. Blood samples must be obtained and handled in accordance with procedures approved by the division. The division shall administer the provisions of this subsection and shall promulgate regulations necessary to carry out its provisions. The costs of the tests administered at the direction of the officer must be paid from the general fund of the State. However, if the person is subsequently convicted of violating Section 56-5-2930, 56-5-2933, or 56-5-2945, then, upon conviction, the person must pay twenty-five dollars for the costs of the tests. The twenty-five dollars must be placed by the Comptroller General into a special restricted account to be used by the State Law Enforcement Division to offset the costs of administration of the breath testing devices, breath testing site video program, and toxicology laboratory.

The person tested or giving samples for testing may have a qualified person of his choice conduct additional tests at the person's expense and must be notified in writing of that right. A person's request or failure to request additional blood tests is not admissible against the person in any proceeding. The failure or inability of the person tested to obtain additional tests does not preclude the admission of evidence relating to the tests or samples taken at the direction of the officer. The officer must provide affirmative assistance to the person to contact a qualified person to conduct and obtain additional tests. Affirmative assistance shall, at a minimum, include providing transportation for the person to the nearest medical facility which provides blood tests to determine a person's alcohol concentration. If the medical facility obtains the blood sample but refuses or fails to test the blood to determine the person's alcohol concentration, SLED must test the blood and provide the result to the person and to the officer. Failure to provide affirmative assistance upon request to obtain additional tests bars the admissibility of the breath test result in any judicial or administrative proceeding.

(E) A qualified person and his employer who obtain samples or administer the tests or assist in obtaining samples or administering of

tests at the direction of the primary investigating officer are immune from civil and criminal liability unless the obtaining of samples or the administering of tests is performed in a negligent, reckless, or fraudulent manner. A person may not be required by the officer ordering the tests to obtain or take any sample of blood or urine.

(F) If a person refuses upon the request of the primary investigating officer to submit to chemical tests as provided in subsection (C), the department must suspend his license, permit, or any nonresident operating privilege, or deny the issuance of a license or permit to him for:

(1) six months; or

(2) one year, if the person, within the five years preceding the violation of this section, has been previously convicted of violating Section 56-5-2930, 56-5-2933, or 56-5-2945 or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or another drug or has had a previous suspension imposed pursuant to Section 56-1-286, 56-5-2950, or 56-5-2951.

(G) If a person submits to a chemical test and the test result indicates an alcohol concentration of two one-hundredths of one percent or more, the department must suspend his license, permit, or any nonresident operating privilege, or deny the issuance of a license or permit to him for:

(1) three months; or

(2) six months, if the person, within the five years preceding the violation of this section, has been previously convicted of violating Section 56-5-2930, 56-5-2933, or 56-5-2945 or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or any other drug or has had a previous suspension imposed pursuant to Section 56-1-286, 56-5-2950, or 56-5-2951.

(H) A person's driver's license, permit, or nonresident operating privilege must be restored when the person's period of suspension under subsection (F) or (G) has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program in which he is enrolled. After the person's driving privilege is restored, he must continue to participate in the Alcohol and Drug Safety Action Program in which he is enrolled. If the person withdraws from or in any way stops making satisfactory progress toward the completion of the Alcohol and Drug Safety Action Program, the person's license must be suspended until he completes the Alcohol and Drug Safety Action Program. A person must be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990 before

his driving privilege can be restored at the conclusion of the suspension period.

(I) A test may not be administered or samples taken unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that:

(1) he does not have to take the test or give the samples but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the tests and that his refusal may be used against him in court;

(2) his privilege to drive must be suspended for at least three months if he takes the test or gives the samples and has an alcohol concentration of two one-hundredths of one percent or more;

(3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense;

(4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and

(5) he must enroll in an Alcohol and Drug Safety Action Program within thirty days of the issuance of the notice of suspension if he does not request an administrative hearing or within thirty days of the issuance of notice that the suspension has been upheld at the administrative hearing.

The primary investigating officer must notify promptly the department of the refusal of a person to submit to a test requested pursuant to this section as well as the test result of any person who submits to a test pursuant to this section and registers an alcohol concentration of two one-hundredths of one percent or more. The notification must be in a manner prescribed by the department.

(J) If the test registers an alcohol concentration of two one-hundredths of one percent or more or if the person refuses to be tested, the primary investigating officer must issue a notice of suspension, and the suspension is effective beginning on the date of the alleged violation of this section. The person, within thirty days of the issuance of the notice of suspension, must enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990 if he does not request an administrative hearing. If the person does not request an administrative hearing and does not enroll in an Alcohol and Drug Safety Action Program within thirty days, the suspension remains in effect, and a temporary alcohol license must not be issued. If the person drives a motor vehicle during the period of suspension without a temporary alcohol license, the person must be penalized for driving while his license is suspended pursuant to Section 56-1-460.

(K) Within thirty days of the issuance of the notice of suspension the person may:

(1) obtain a temporary alcohol license by filing with the department a form for this purpose. A one-hundred-dollar fee must be assessed for obtaining a temporary alcohol license. Twenty-five dollars of the fee must be retained by the Department of Public Safety for supplying and maintaining all necessary vehicle videotaping equipment. The remaining seventy-five dollars must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray its expenses. The temporary alcohol license allows the person to drive a motor vehicle without any restrictive conditions pending the outcome of the administrative hearing provided for in this section or the final decision or disposition of the matter; and

(2) request an administrative hearing.

At the administrative hearing if:

(a) the suspension is upheld, the person must enroll in an Alcohol and Drug Safety Action Program and his driver's license, permit, or nonresident operating privilege must be suspended or the person must be denied the issuance of a license or permit for the remainder of the suspension periods provided for in subsections (F) and (G); or

(b) the suspension is overturned, the person must have his driver's license, permit, or nonresident operating privilege reinstated.

(L) The periods of suspension provided for in subsections (F) and (G) begin on the day the notice of suspension is issued, or at the expiration of any other suspensions, and continue until the person applies for a temporary alcohol license and requests an administrative hearing.

(M) If a person does not request an administrative hearing, he shall have waived his right to the hearing and his suspension must not be stayed but shall continue for the periods provided for in subsections (F) and (G).

(N) The notice of suspension must advise the person of the requirement to enroll in an Alcohol and Drug Safety Action Program and of his right to obtain a temporary alcohol license and to request an administrative hearing. The notice of suspension also must advise the person that, if he does not request an administrative hearing within thirty days of the issuance of the notice of suspension, he must enroll in an Alcohol and Drug Safety Action Program, and he waives his right to the administrative hearing, and the suspension continues for the periods provided for in subsections (F) and (G).



(O) An administrative hearing must be held after the request for the hearing is received by the Division of Motor Vehicle Hearings. The scope of the hearing is limited to whether the person:

- (1) was lawfully arrested or detained;
- (2) was given a written copy of and verbally informed of the rights enumerated in subsection (I);
- (3) refused to submit to a test pursuant to this section; or
- (4) consented to taking a test pursuant to this section, and the:
  - (a) reported alcohol concentration at the time of testing was two one-hundredths of one percent or more;
  - (b) individual who administered the test or took samples was qualified pursuant to this section;
  - (c) test administered and samples taken were conducted pursuant to this section; and
  - (d) the machine was operating properly.

Nothing in this section prohibits the introduction of evidence at the administrative hearing on the issue of the accuracy of the breath test result.

A written order must be issued to all parties either reversing or upholding the suspension of the person's license, permit, or nonresident's operating privilege, or denying the issuance of a license or permit. If the suspension is upheld, the person must receive credit for the number of days his license was suspended before he received a temporary alcohol license and requested the administrative hearing.

(P) An administrative hearing is a contested proceeding under the Administrative Procedures Act, and a person has a right to appeal the decision of the hearing officer pursuant to that act to the Administrative Law Court in accordance with its appellate rules. The filing of an appeal shall stay the suspension until a final decision is issued.

(Q) A person who is unconscious or otherwise in a condition rendering him incapable of refusal is considered to be informed and not to have withdrawn the consent provided for in subsection (B) of this section.

(R) When a nonresident's privilege to drive a motor vehicle in this State has been suspended under the procedures of this section, the department shall give written notice of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license or permit.

(S) A person required to submit to a test must be provided with a written report including the time of arrest, the time of the tests, and the results of the tests before any proceeding in which the results of the tests are used as evidence. A person who obtains additional tests shall furnish a copy of the time, method, and results of any additional tests to

the officer before any trial, hearing, or other proceeding in which the person attempts to use the results of the additional tests as evidence.

(T) A person whose driver's license or permit is suspended under this section is not required to file proof of financial responsibility.

(U) The department shall administer the provisions of this section, not including subsection (D), and shall promulgate regulations necessary to carry out its provisions.

(V) Notwithstanding any other provision of law, no suspension imposed pursuant to this section is counted as a demerit or result in any insurance penalty for automobile insurance purposes if at the time he was stopped, the person whose license is suspended had an alcohol concentration that was less than eight one-hundredths of one percent."

### **Issuance of special restricted licenses**

SECTION 3. Section 56-1-748 of the 1976 Code is amended to read:

"Section 56-1-748. No person issued a restricted driver's license under the provisions of Section 56-1-170(B), Section 56-1-320(A), Section 56-1-740(B), Section 56-1-745(C), Section 56-1-746(D), Section 56-5-750(G), Section 56-9-430(B), Section 56-10-260(B), Section 56-10-270(C), or Section 56-5-2951(H) shall subsequently be eligible for issuance of a restricted driver's license under these provisions."

### **Unlawful operation of a vehicle**

SECTION 4. Section 56-5-2930 of the 1976 Code is amended to read:

"Section 56-5-2930. (A) It is unlawful for a person to drive a motor vehicle within this State while under the influence of alcohol to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired. A person who violates the provisions of this section is guilty of the offense of driving under the influence and, upon conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail must be punished as follows:

(1) for a first offense, by a fine of four hundred dollars or imprisonment for not less than forty-eight hours nor more than thirty days. However, in lieu of the forty-eight hour minimum imprisonment, the court may provide for forty-eight hours of public service employment. The minimum forty-eight hour imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions the court considers proper. However, the court may not compel an offender to perform public service employment in lieu of the minimum forty-eight hour sentence. If the person's alcohol concentration is at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent, then the person must be punished by a fine of five hundred dollars or imprisonment for not less than seventy-two hours nor more than thirty days. However, in lieu of the seventy-two hour minimum imprisonment, the court may provide for seventy-two hours of public service employment. The minimum seventy-two hour imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions as the court considers proper. However, the court may not compel an offender to perform public service employment in lieu of the minimum sentence. If the person's alcohol concentration is sixteen one-hundredths of one percent or more, then the person must be punished by a fine of one thousand dollars or imprisonment for not less than thirty days nor more than ninety days. However, in lieu of the thirty-day minimum imprisonment, the court may provide for thirty days of public service employment. The minimum thirty days imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions as the court considers proper. However, the court may not compel an offender to perform public service employment instead of the thirty-day minimum sentence. Notwithstanding the provisions of Sections 22-3-540, 22-3-545, and 22-3-550, a first offense charged for this item may be tried in magistrates court;

(2) for a second offense, by a fine of not less than two thousand one hundred dollars nor more than five thousand one hundred dollars, and imprisonment for not less than five days nor more than one year. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars. If the person's alcohol concentration is at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent, then the person must be punished by a fine of not less than two thousand five hundred dollars nor more than five thousand five hundred dollars and imprisonment for

not less than thirty days nor more than two years. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars. If the person's alcohol concentration is sixteen one-hundredths of one percent or more, then the person must be punished by a fine of not less than three thousand five hundred dollars nor more than six thousand five hundred dollars and imprisonment for not less than ninety days nor more than three years. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars;

(3) for a third offense, by a fine of not less than three thousand eight hundred dollars nor more than six thousand three hundred dollars, and imprisonment for not less than sixty days nor more than three years. If the person's alcohol concentration is at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent, then the person must be punished by a fine of not less than five thousand dollars nor more than seven thousand five hundred dollars and imprisonment for not less than ninety days nor more than four years. If the person's alcohol concentration is sixteen one-hundredths of one percent or more, then the person must be punished by a fine of not less than seven thousand five hundred dollars nor more than ten thousand dollars and imprisonment for not less than six months nor more than five years; or

(4) for a fourth or subsequent offense, by imprisonment for not less than one year nor more than five years. If the person's alcohol concentration is at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent, then the person must be punished by imprisonment for not less than two years nor more than six years. If the person's alcohol concentration is sixteen one-hundredths of one percent or more, then the person must be punished by imprisonment for not less than three years nor more than seven years.

(B) No part of the minimum sentences provided in this section may be suspended. Instead of public service employment the court may invoke another sentence provided in this section. For a second or subsequent offense of this section, the service of the minimum sentence is mandatory. However, the judge may provide for the sentence to be served upon terms and conditions as he considers proper including, but not limited to, weekend service or nighttime service in any fashion he considers necessary.

(C) The fine for a first offense must not be suspended. The court is prohibited from suspending a monetary fine below that of the next preceding minimum monetary fine.

(D) For the purposes of this section, a conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail for the violation of a

law or ordinance of this or another state or a municipality of this or another state that prohibits a person from driving a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics, including, but not limited to, this section, or prohibits a person from driving a motor vehicle with an unlawful alcohol concentration, including, but not limited to, Section 56-5-2933, constitutes a prior offense of this section. Only those violations which occurred within a period of ten years including and immediately preceding the date of the last violation constitute prior violations within the meaning of this section.

(E) Upon imposition of a sentence of public service, the defendant may apply to the court to be allowed to perform his public service in his county of residence if he has been sentenced to public service in a county where he does not reside.

(F) One hundred dollars of each fine imposed pursuant to this section must be placed by the Comptroller General into a special restricted account to be used by the Department of Public Safety for the Highway Patrol.

(G) Two hundred dollars of the fine imposed pursuant to subsection (A)(3) must be placed by the Comptroller General into a special restricted account to be used by the State Law Enforcement Division to offset the costs of administration of the breath testing devices, breath testing site video program, and toxicology laboratory.

(H) A person convicted of violating this section, whether for a first offense or subsequent offense, must enroll in and successfully complete an Alcohol and Drug Safety Action Program certified by the Department of Alcohol and Other Drug Abuse Services. An assessment of the extent and nature of the alcohol and drug abuse problem of the applicant must be prepared and a plan of education or treatment, or both, must be developed for the applicant. The Alcohol and Drug Safety Action Program shall determine if the applicant successfully has completed the services. The applicant must attend the first Alcohol and Drug Safety Action Program available after the date of enrollment. The Department of Alcohol and Other Drug Abuse Services shall determine the cost of services provided by each certified Alcohol and Drug Safety Action Program. Each applicant shall bear the cost of services recommended in the applicant's plan of education or treatment. The cost may not exceed five hundred dollars for education services, two thousand dollars for treatment services, and two thousand five hundred dollars in total for all services. An applicant may not be denied services due to an inability to pay. Inability to pay for services may not be used as a factor in determining if the applicant has successfully completed services. An applicant who is unable to pay

for services shall perform fifty hours of community service as arranged by the Alcohol and Drug Safety Action Program, which may use the completion of this community service as a factor in determining if the applicant successfully has completed services. The court must be notified whether an offender failed to enroll in a certified program within thirty days or failed to participate in the plan of education or treatment. The court may hold the individual in contempt of court if the individual cannot show cause as to why no enrollment occurred within the mandated thirty days or why no progress has been made on the plan of education or treatment.

(I) A person charged for a violation of this section may be prosecuted pursuant to Section 56-5-2933 if the original testing of the person's breath or collection of other bodily fluids was performed within two hours of the time of arrest and reasonable suspicion existed to justify the traffic stop. A person may not be prosecuted for both a violation of this section and a violation of Section 56-5-2933 for the same incident. A person who violates the provisions of this section is entitled to a jury trial and is afforded the right to challenge certain factors including the following:

- (1) whether or not the person was lawfully arrested or detained;
- (2) the period of time between arrest and testing;
- (3) whether or not the person was given a written copy of and verbally informed of the rights enumerated in Section 56-5-2950;
- (4) whether the person consented to taking a test pursuant to Section 56-5-2950, and whether the:
  - (a) reported alcohol concentration at the time of testing was eight one-hundredths of one percent or more;
  - (b) individual who administered the test or took samples was qualified pursuant to Section 56-5-2950;
  - (c) tests administered and samples obtained were conducted pursuant to Section 56-5-2950 and regulations adopted pursuant to Section 56-5-2951(O) and Section 56-5-2953(F); and
  - (d) machine was working properly.

(J) Nothing contained in this section prohibits the introduction of:

- (1) the results of any additional tests of the person's breath or other bodily fluids;
  - (2) any evidence that may corroborate or question the validity of the breath or bodily fluid test result including, but not limited to:
    - (a) evidence of field sobriety tests;
    - (b) evidence of the amount of alcohol consumed by the person;
- and
- (c) evidence of the person's driving;

(3) a video recording of the person's conduct at the incident site and breath testing site taken pursuant to Section 56-5-2953 which is subject to redaction under the South Carolina Rules of Evidence; or

(4) any other evidence of the state of a person's faculties to drive a motor vehicle which would call into question the results of a breath or bodily fluid test.

At trial, a person charged with a violation of this section is allowed to present evidence relating to the factors enumerated above and the totality of the evidence produced at trial may be used by the jury to determine guilt or innocence. A person charged with a violation of this section must be given notice of intent to prosecute under the provisions of this section at least thirty calendar days before his trial date.

(K) For the purpose of this section, any offense carrying a penalty of imprisonment of ninety days or less may be tried in magistrates court.

(L) In cases in which enhanced penalties for higher levels of alcohol concentration may be applicable, upon the determination of guilt, the finder of fact shall determine the alcohol concentration and the judge shall apply the appropriate penalty. In cases involving jury trials, upon the return of a guilty verdict by the jury, the judge shall instruct the jury to make a finding of fact as to the following: 'We the jury find the alcohol concentration of the defendant to be (1) at least eight one-hundredths of one percent but less than ten one-hundredths of one percent; (2) at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent; or (3) sixteen one hundredths of one percent or more.' Based on the jury's finding of fact, the judge shall apply the appropriate penalty. If the jury cannot reach a unanimous verdict as to the finding of fact, then the judge shall sentence the defendant based on the nonenhanced penalties."

### **Driving with an unlawful alcohol concentration**

SECTION 5. Section 56-5-2933 of the 1976 Code is amended to read:

"Section 56-5-2933. (A) It is unlawful for a person to drive a motor vehicle within this State while his alcohol concentration is eight one-hundredths of one percent or more. A person who violates the provisions of this section is guilty of the offense of driving with an unlawful alcohol concentration and, upon conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail must be punished as follows:

(1) for a first offense, by a fine of four hundred dollars or imprisonment for not less than forty-eight hours nor more than thirty days. However, in lieu of the forty-eight hour minimum imprisonment,

the court may provide for forty-eight hours of public service employment. The minimum forty-eight hour imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions the court considers proper. However, the court may not compel an offender to perform public service employment in lieu of the minimum forty-eight hour sentence. If the person's alcohol concentration is at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent, then the person must be punished by a fine of five hundred dollars or imprisonment for not less than seventy-two hours nor more than thirty days. However, in lieu of the seventy-two hour minimum imprisonment, the court may provide for seventy-two hours of public service employment. The minimum seventy-two hour imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions as the court considers proper. However, the court may not compel an offender to perform public service employment in lieu of the minimum sentence. If the person's alcohol concentration is sixteen one-hundredths of one percent or more, then the person must be punished by a fine of one thousand dollars or imprisonment for not less than thirty days nor more than ninety days. However, in lieu of the thirty-day minimum imprisonment, the court may provide for thirty days of public service employment. The minimum thirty days imprisonment or public service employment must be served at a time when the person is not working and does not interfere with his regular employment under terms and conditions as the court considers proper. However, the court may not compel an offender to perform public service employment instead of the thirty-day minimum sentence. Notwithstanding the provisions of Sections 22-3-540, 22-3-545, and 22-3-550, a first offense charged for this item may be tried in magistrates court;

(2) for a second offense, by a fine of not less than two thousand one hundred dollars nor more than five thousand one hundred dollars, and imprisonment for not less than five days nor more than one year. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars. If the person's alcohol concentration is at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent, then the person must be punished by a fine of not less than two thousand five hundred dollars nor more than five thousand five hundred dollars and imprisonment for not less than thirty days nor more than two years. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars. If the person's alcohol concentration is



sixteen one-hundredths of one percent or more, then the person must be punished by a fine of not less than three thousand five hundred dollars nor more than six thousand five hundred dollars and imprisonment for not less than ninety days nor more than three years. However, the fine imposed by this item must not be suspended in an amount less than one thousand one hundred dollars;

(3) for a third offense, by a fine of not less than three thousand eight hundred dollars nor more than six thousand three hundred dollars, and imprisonment for not less than sixty days nor more than three years. If the person's alcohol concentration is at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent, then the person must be punished by a fine of not less than five thousand dollars nor more than seven thousand five hundred dollars and imprisonment for not less than ninety days nor more than four years. If the person's alcohol concentration is sixteen one-hundredths of one percent or more, then the person must be punished by a fine of not less than seven thousand five hundred dollars nor more than ten thousand dollars and imprisonment for not less than six months nor more than five years; or

(4) for a fourth or subsequent offense, by imprisonment for not less than one year nor more than five years. If the person's alcohol concentration is at least ten one-hundredths of one percent but less than sixteen one-hundredths of one percent, then the person must be punished by imprisonment for not less than two years nor more than six years. If the person's alcohol concentration is sixteen one-hundredths of one percent or more, then the person must be punished by imprisonment for not less than three years nor more than seven years.

(B) No part of the minimum sentences provided in this section may be suspended. Instead of public service employment the court may invoke another sentence provided in this section. For a second or subsequent offense of this section, the service of the minimum sentence is mandatory. However, the judge may provide for the sentence to be served upon terms and conditions as he considers proper including, but not limited to, weekend service or nighttime service in any fashion he considers necessary.

(C) The fine for a first offense must not be suspended. The court is prohibited from suspending a monetary fine below that of the next preceding minimum monetary fine.

(D) For the purposes of this chapter a conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail for the violation of a law or ordinance of this or another state or a municipality of this or another state that prohibits a person from driving a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics,

including, but not limited to, Section 56-5-2930, or prohibits a person from driving a motor vehicle with an unlawful alcohol concentration, including, but not limited to, this section, constitutes a prior offense of this section. Only those violations which occurred within a period of ten years including and immediately preceding the date of the last violation constitute prior violations within the meaning of this section.

(E) Upon imposition of a sentence of public service, the defendant may apply to the court to be allowed to perform his public service in his county of residence if he has been sentenced to public service in a county where he does not reside.

(F) One hundred dollars of each fine imposed pursuant to this section must be placed by the Comptroller General into a special restricted account to be used by the Department of Public Safety for the Highway Patrol.

(G) Two hundred dollars of the fine imposed pursuant to subsections (A)(3) must be placed by the Comptroller General into a special restricted account to be used by the State Law Enforcement Division to offset the costs of administration of the breath testing devices, breath testing site video program, and toxicology laboratory.

(H) A person convicted of violating this section, whether for a first offense or subsequent offense, must enroll in and successfully complete an Alcohol and Drug Safety Action Program certified by the Department of Alcohol and Other Drug Abuse Services. An assessment of the extent and nature of the alcohol and drug abuse problem of the applicant must be prepared and a plan of education or treatment, or both, must be developed for the applicant. The Alcohol and Drug Safety Action Program shall determine if the applicant successfully has completed the services. The applicant must attend the first Alcohol and Drug Safety Action Program available after the date of enrollment. The Department of Alcohol and Other Drug Abuse Services shall determine the cost of services provided by each certified Alcohol and Drug Safety Action Program. Each applicant shall bear the cost of services recommended in the applicant's plan of education or treatment. The cost may not exceed five hundred dollars for education services, two thousand dollars for treatment services, and two thousand five hundred dollars in total for all services. An applicant may not be denied services due to an inability to pay. Inability to pay for services may not be used as a factor in determining if the applicant successfully has completed services. An applicant who is unable to pay for services shall perform fifty hours of community service as arranged by the Alcohol and Drug Safety Action Program, which may use the completion of this community service as a factor in determining if the applicant successfully has completed services. The court must be

notified whether an offender failed to enroll in a certified program within thirty days or failed to participate in the plan of education or treatment. The court may hold the individual in contempt of court if the individual cannot show cause as to why no enrollment occurred within the mandated thirty days or why no progress has been made on the plan of education or treatment.

(I) A person charged for a violation of Section 56-5-2930 may be prosecuted pursuant to this section if the original testing of the person's breath or collection of other bodily fluids was performed within two hours of the time of arrest and reasonable suspicion existed to justify the traffic stop. A person may not be prosecuted for both a violation of Section 56-5-2930 and a violation of this section for the same incident. A person who violates the provisions of this section is entitled to a jury trial and is afforded the right to challenge certain factors including the following:

- (1) whether or not the person was lawfully arrested or detained;
- (2) the period of time between arrest and testing;
- (3) whether or not the person was given a written copy of and verbally informed of the rights enumerated in Section 56-5-2950;
- (4) whether the person consented to taking a test pursuant to Section 56-5-2950, and whether the:
  - (a) reported alcohol concentration at the time of testing was eight one-hundredths of one percent or more;
  - (b) individual who administered the test or took samples was qualified pursuant to Section 56-5-2950;
  - (c) tests administered and samples obtained were conducted pursuant to Section 56-5-2950 and regulations adopted pursuant to Section 56-5-2951(O) and Section 56-5-2953(F); and
  - (d) machine was working properly.

(J) Nothing contained in this section prohibits the introduction of:

- (1) the results of any additional tests of the person's breath or other bodily fluids;
  - (2) any evidence that may corroborate or question the validity of the breath or bodily fluid test result including, but not limited to:
    - (a) evidence of field sobriety tests;
    - (b) evidence of the amount of alcohol consumed by the person;
- and
- (c) evidence of the person's driving;
  - (3) a video recording of the person's conduct at the incident site and breath testing site taken pursuant to Section 56-5-2953 which is subject to redaction under the South Carolina Rules of Evidence; or

(4) any other evidence of the state of a person's faculties to drive which would call into question the results of a breath or bodily fluid test.

At trial, a person charged with a violation of this section is allowed to present evidence relating to the factors enumerated above and the totality of the evidence produced at trial may be used by the jury to determine guilt or innocence. A person charged with a violation of this section must be given notice of intent to prosecute under the provisions of this section at least thirty calendar days before his trial date.

(K) For the purpose of this section, any offense carrying a penalty of imprisonment of ninety days or less may be tried in magistrates court.

(L) In cases in which enhanced penalties for higher levels of alcohol concentration may be applicable, upon the determination of guilt, the finder of fact shall determine the alcohol concentration and the judge shall apply the appropriate penalty."

### **Compulsory process**

SECTION 6. Section 56-5-2934 of the 1976 Code is amended to read:

"Section 56-5-2934. Notwithstanding any other provision of law, a person charged with a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 who is being tried in any court of competent jurisdiction in this State has the right to compulsory process for obtaining witnesses, documents, or both, including, but not limited to, state employees charged with the maintenance of breath testing devices in this State and the administration of breath testing pursuant to this article. This process may be issued under the official signature of the magistrate, judge, clerk, or other officer of the court of competent jurisdiction. The term 'documents' includes, but is not limited to, a copy of the computer software program of breath testing devices. SLED must produce all breath testing software in a manner that complies with any and all licensing agreements. This section does not limit a person's ability to obtain breath testing software directly from the manufacturer or distributor."

### **Vehicle immobilization**

SECTION 7. Section 56-5-2942 of the 1976 Code is amended to read:

"Section 56-5-2942. (A) A person who is convicted of or pleads guilty or nolo contendere to a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 must have all motor vehicles

owned by or registered to him immobilized if the person is a resident of this State, unless the vehicle has been confiscated pursuant to Section 56-5-6240.

(B) For purposes of this section, 'immobilized' and 'immobilization' mean suspension and surrender of the registration and motor vehicle license plate.

(C) Upon receipt of a conviction by the department from the court for a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945, the department must determine all vehicles registered to the convicted person, both solely and jointly, and suspend all vehicles registered to the person.

(D) Upon notification by a court in this State or by any other state of a conviction for a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945, the department must require the person convicted to surrender all license plates and vehicle registrations subject to immobilization pursuant to this section. The immobilization is for a period of thirty days to take place during the driver's license suspension pursuant to a conviction for a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. The department must maintain a record of all vehicles immobilized pursuant to this section.

(E) An immobilized motor vehicle must be released to the holder of a bona fide lien on the motor vehicle when possession of the motor vehicle is requested, as provided by law, by the lienholder for the purpose of foreclosing on and satisfying the lien.

(F) An immobilized motor vehicle may be released by the department without legal or physical restraints to a person who has not been convicted of a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945, if that person is a registered owner of the motor vehicle or a member of the household of a registered owner. The vehicle must be released if an affidavit is submitted by that person to the department stating that:

(1) he regularly drives the motor vehicle subject to immobilization;

(2) the immobilized motor vehicle is necessary to his employment, transportation to an educational facility, or for the performance of essential household duties;

(3) no other motor vehicle is available for the person's use;

(4) the person will not authorize the use of the motor vehicle by any other person known by him to have been convicted of a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945; or

(5) the person will report immediately to a local law enforcement agency any unauthorized use of the motor vehicle by a person known

by him to have been convicted of a second or subsequent violation of Section 56-5-2930, 56-5-2933, or 56-5-2945.

(G) The department may conduct a hearing and receive testimony regarding the veracity of an affidavit submitted pursuant to subsection (F) or issue an agency decision to permit or deny the release of the vehicle based on the affidavit. A person may seek relief pursuant to the provisions of the Administrative Procedures Act from an agency action immobilizing a motor vehicle or denying the release of the motor vehicle.

(H) A person who drives an immobilized motor vehicle except as provided in subsections (E) and (F) is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

(I) A person who fails to surrender registrations and license plates pursuant to this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

(J) A fee of fifty dollars must be paid to the department for each motor vehicle that was suspended before any of the suspended registrations and license plates may be registered or before the motor vehicle may be released pursuant to subsection (F). This fee must be placed by the Comptroller General into a special restricted interest bearing account to be used by the Department of Motor Vehicles to defray its expenses.

(K) For purposes of this article, a conviction of or plea of nolo contendere to Section 56-5-2933 is considered a prior offense of Section 56-5-2930."

### **Great bodily injury or death**

SECTION 8. Section 56-5-2945(A) and (B) of the 1976 Code is amended to read:

“(A) A person who, while under the influence of alcohol, drugs, or the combination of alcohol and drugs, drives a motor vehicle and when driving a motor vehicle does any act forbidden by law or neglects any duty imposed by law in the driving of the motor vehicle, which act or neglect proximately causes great bodily injury or death to a person other than himself, is guilty of the offense of felony driving under the influence and, upon conviction, must be punished:

(1) by a mandatory fine of not less than five thousand one hundred dollars nor more than ten thousand one hundred dollars and

mandatory imprisonment for not less than thirty days nor more than fifteen years when great bodily injury results;

(2) by a mandatory fine of not less than ten thousand one hundred dollars nor more than twenty-five thousand one hundred dollars and mandatory imprisonment for not less than one year nor more than twenty-five years when death results.

A part of the mandatory sentences required to be imposed by this section must not be suspended, and probation must not be granted for any portion.

(B) As used in this section, 'great bodily injury' means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

The Department of Motor Vehicles must suspend the driver's license of a person who is convicted or who receives sentence upon a plea of guilty or nolo contendere pursuant to this section for a period to include a period of incarceration plus three years for a conviction of Section 56-5-2945 when 'great bodily injury' occurs and five years when a death occurs. This period of incarceration shall not include any portion of a suspended sentence such as probation, parole, supervised furlough, or community supervision. For suspension purposes of this section, convictions arising out of a single incident shall run concurrently."

#### **Implied consent to testing for alcohol or drugs**

SECTION 9. Section 56-5-2950 of the 1976 Code is amended to read:

"Section 56-5-2950. (A) A person who drives a motor vehicle in this State is considered to have given consent to chemical tests of his breath, blood, or urine for the purpose of determining the presence of alcohol or drugs or the combination of alcohol and drugs if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs. A breath test must be administered at the direction of a law enforcement officer who has arrested a person for driving a motor vehicle in this State while under the influence of alcohol, drugs, or a combination of alcohol and drugs. At the direction of the arresting officer, the person first must be offered a breath test to determine the person's alcohol concentration. If the person is physically unable to provide an acceptable breath sample because he has an injured mouth, is unconscious or dead, or for any other reason considered acceptable by the licensed medical personnel, the arresting officer may request a blood sample to be taken. If the

officer has reasonable suspicion that the person is under the influence of drugs other than alcohol, or is under the influence of a combination of alcohol and drugs, the officer may order that a urine sample be taken for testing. A breath sample taken for testing must be collected within two hours of the arrest. Any additional tests to collect other samples must be collected within three hours of the arrest. The breath test must be administered by a person trained and certified by the South Carolina Criminal Justice Academy, pursuant to SLED policies. Before the breath test is administered, an eight one-hundredths of one percent simulator test must be performed and the result must reflect a reading between 0.076 percent and 0.084 percent. Blood and urine samples must be obtained by physicians licensed by the State Board of Medical Examiners, registered nurses licensed by the State Board of Nursing, and other medical personnel trained to obtain the samples in a licensed medical facility. Blood and urine samples must be obtained and handled in accordance with procedures approved by SLED.

(B) No tests may be administered or samples obtained unless, upon activation of the video recording equipment and prior to the commencement of the testing procedure, the person has been given a written copy of and verbally informed that:

(1) he does not have to take the test or give the samples, but that his privilege to drive must be suspended or denied for at least six months if he refuses to submit to the test and that his refusal may be used against him in court;

(2) his privilege to drive must be suspended for at least one month if he takes the test or gives the samples and has an alcohol concentration of fifteen one-hundredths of one percent or more;

(3) he has the right to have a qualified person of his own choosing conduct additional independent tests at his expense;

(4) he has the right to request an administrative hearing within thirty days of the issuance of the notice of suspension; and

(5) if he does not request an administrative hearing or if his suspension is upheld at the administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

(C) A hospital, physician, qualified technician, chemist, or registered nurse who obtains the samples or conducts the test or participates in the process of obtaining the samples or conducting the test in accordance with this section is not subject to a cause of action for assault, battery, or another cause alleging that the drawing of blood or taking samples at the request of the arrested person or a law enforcement officer was wrongful. This release from liability does not reduce the standard of medical care required of the person obtaining the samples or conducting the test. This qualified release also applies to



the employer of the person who conducts the test or obtains the samples.

(D) The person tested or giving samples for testing may have a qualified person of his own choosing conduct additional tests at his expense and must be notified in writing of that right. A person's request or failure to request additional blood or urine tests is not admissible against the person in the criminal trial. The failure or inability of the person tested to obtain additional tests does not preclude the admission of evidence relating to the tests or samples obtained at the direction of the law enforcement officer.

(E) The arresting officer must provide affirmative assistance to the person to contact a qualified person to conduct and obtain additional tests. Affirmative assistance, at a minimum, includes providing transportation for the person to the nearest medical facility which performs blood tests to determine a person's alcohol concentration. If the medical facility obtains the blood sample but refuses or fails to test the blood sample to determine the person's alcohol concentration, SLED must test the blood sample and provide the result to the person and to the arresting officer. Failure to provide affirmative assistance upon request to obtain additional tests bars the admissibility of the breath test result in any judicial or administrative proceeding.

SLED must administer the provisions of this subsection and must make regulations necessary to carry out its provisions. The costs of the tests administered at the direction of the law enforcement officer must be paid from the general fund of the state. However, if the person is subsequently convicted of violating Section 56-5-2930, 56-5-2933, or 56-5-2945, then, upon conviction, the person must pay twenty-five dollars for the costs of the tests. The twenty-five dollars must be placed by the Comptroller General into a special restricted account to be used by the State Law Enforcement Division to offset the costs of administration of the breath testing devices, breath testing site video program, and toxicology laboratory.

(F) A qualified person who obtains samples or administers the tests or assists in obtaining samples or the administration of tests at the direction of a law enforcement officer is released from civil and criminal liability unless the obtaining of samples or tests is performed in a negligent, reckless, or fraudulent manner. No person may be required by the arresting officer, or by another law enforcement officer, to obtain or take any sample of blood or urine.

(G) In the criminal prosecution for a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945 the alcohol concentration at the time of the test, as shown by chemical analysis of the person's breath or other body fluids, gives rise to the following:

(1) if the alcohol concentration was at that time five one-hundredths of one percent or less, it is conclusively presumed that the person was not under the influence of alcohol;

(2) if the alcohol concentration was at that time in excess of five one-hundredths of one percent but less than eight one-hundredths of one percent, this fact does not give rise to any inference that the person was or was not under the influence of alcohol, but this fact may be considered with other evidence in determining the guilt or innocence of the person; or

(3) if the alcohol concentration was at that time eight one-hundredths of one percent or more, it may be inferred that the person was under the influence of alcohol.

The provisions of this section must not be construed as limiting the introduction of any other evidence bearing upon the question of whether or not the person was under the influence of alcohol, drugs, or a combination of them.

(H) A person who is unconscious or otherwise in a condition rendering him incapable of refusal is considered to be informed and not to have withdrawn the consent provided by subsection (A) of this section.

(I) A person required to submit to tests by the arresting law enforcement officer must be provided with a written report including the time of arrest, the time of the tests, and the results of the tests before any trial or other proceeding in which the results of the tests are used as evidence. A person who obtains additional tests must furnish a copy of the time, method, and results of any test to the officer before any trial, hearing, or other proceeding in which the person attempts to use the results of the additional tests as evidence.

(J) Policies, procedures, and regulations promulgated by SLED may be reviewed by the trial judge or hearing officer on motion of either party. The failure to follow any of these policies, procedures, and regulations, or the provisions of this section, shall result in the exclusion from evidence of any test results, if the trial judge or hearing officer finds that this failure materially affected the accuracy or reliability of the test results or the fairness of the testing procedure and the court trial judge or hearing officer rules specifically as to the manner in which the failure materially affected the accuracy or reliability of the test results or the fairness of the procedure.

(K) If a state employee charged with the maintenance of breath testing devices in this State and the administration of breath testing policy is required to testify at an administrative hearing or court proceeding, the entity employing the witness may charge a reasonable fee to the defendant for these services.”

## **Suspension of a driver's license**

SECTION 10. Section 56-5-2951 of the 1976 Code, as last amended by Act 381 of 2006, is further amended to read:

"Section 56-5-2951. (A) The Department of Motor Vehicles must suspend the driver's license, permit, or nonresident operating privilege of or deny the issuance of a license or permit to a person who drives a motor vehicle and refuses to submit to a test provided for in Section 56-5-2950 or has an alcohol concentration of fifteen one-hundredths of one percent or more. The arresting officer must issue a notice of suspension which is effective beginning on the date of the alleged violation of Section 56-5-2930, 56-5-2933, or 56-5-2945.

(B) Within thirty days of the issuance of the notice of suspension, the person may:

(1) obtain a temporary alcohol license by filing with the Department of Motor Vehicles a form for this purpose. A one hundred dollar fee must be assessed for obtaining a temporary alcohol license. Twenty-five dollars of the fee must be retained by the Department of Public Safety for supplying and maintaining all necessary vehicle videotaping equipment. The remaining seventy-five dollars must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray its expenses. The temporary alcohol license allows the person to drive without any restrictive conditions pending the outcome of the administrative hearing provided for in subsection (F) or the final decision or disposition of the matter. If the suspension is upheld at the administrative hearing, the temporary alcohol license remains in effect until the Department of Motor Vehicles issues the hearing officer's decision and sends notice to the person that he is eligible to receive a restricted license pursuant to subsection (H); and

(2) request an administrative hearing.

At the administrative hearing if:

(a) the suspension is upheld, the person's driver's license, permit, or nonresident operating privilege must be suspended or the person must be denied the issuance of a license or permit for the remainder of the suspension period provided for in subsection (I). Within thirty days of the issuance of the notice that the suspension has been upheld, the person must enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990;

(b) the suspension is overturned, the person must have his driver's license, permit, or nonresident operating privilege reinstated.

The provisions of this subsection do not affect the trial for a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945.

(C) The period of suspension provided for in subsection (I) begins on the day the notice of suspension is issued, or at the expiration of any other suspensions, and continues until the person applies for a temporary alcohol license and requests an administrative hearing.

(D) If a person does not request an administrative hearing, he waives his right to the hearing, and his suspension must not be stayed but continues for the period provided for in subsection (I).

(E) The notice of suspension must advise the person of his right to obtain a temporary alcohol driver's license and to request an administrative hearing. The notice of suspension also must advise the person that, if he does not request an administrative hearing within thirty days of the issuance of the notice of suspension, he waives his right to the administrative hearing, and the suspension continues for the period provided for in subsection (I). The notice of suspension must also advise the person that if the suspension is upheld at the administrative hearing or if he does not request an administrative hearing, he must enroll in an Alcohol and Drug Safety Action Program.

(F) An administrative hearing must be held after the request for the hearing is received by the Division of Motor Vehicle Hearings. The scope of the hearing is limited to whether the person:

- (1) was lawfully arrested or detained;
- (2) was given a written copy of and verbally informed of the rights enumerated in Section 56-5-2950;
- (3) refused to submit to a test pursuant to Section 56-5-2950; or
- (4) consented to taking a test pursuant to Section 56-5-2950, and the:

(a) reported alcohol concentration at the time of testing was fifteen one-hundredths of one percent or more;

(b) individual who administered the test or took samples was qualified pursuant to Section 56-5-2950;

(c) tests administered and samples obtained were conducted pursuant to Section 56-5-2950; and

(d) machine was working properly.

Nothing in this section prohibits the introduction of evidence at the administrative hearing on the issue of the accuracy of the breath test result.

A written order must be issued to all parties either reversing or upholding the suspension of the person's license, permit, or nonresident's operating privilege, or denying the issuance of a license or permit. If the suspension is upheld, the person must receive credit

for the number of days his license was suspended before he received a temporary alcohol license and requested the administrative hearing.

(G) An administrative hearing is a contested case proceeding under the Administrative Procedures Act, and a person has a right to appeal the decision of the hearing officer pursuant to that act to the Administrative Law Court in accordance with its appellate rules. The filing of an appeal stays the suspension until a final decision is issued on appeal.

(H)(1) If the suspension is upheld at the administrative hearing, the person must enroll in an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990 and may apply for a restricted license if he is employed or enrolled in a college or university. The restricted license permits him to drive only to and from work and his place of education and in the course of his employment or education during the period of suspension. The restricted license also permits him to drive to and from the Alcohol Drug Safety Action Program classes or to a court-ordered drug program. The department may issue the restricted license only upon showing by the individual that he is employed or enrolled in a college or university, that he lives further than one mile from his place of employment, place of education, or location of his Alcohol and Drug Safety Action Program classes, or the location of his court-ordered drug program, and that there is no adequate public transportation between his residence and his place of employment, his place of education, the location of his Alcohol and Drug Safety Action Program classes, or the location of his court-ordered drug program.

(2) If the department issues a restricted license, it must designate reasonable restrictions on the times during which and routes on which the individual may drive a motor vehicle. A change in the employment hours, place of employment, status as a student, status of attendance of Alcohol and Drug Safety Action Program classes, status of attendance of his court-ordered drug program, or residence must be reported immediately to the department by the licensee.

(3) The fee for a restricted license is one hundred dollars, but no additional fee may be charged because of changes in the place and hours of employment, education, or residence. Twenty dollars of this fee must be deposited in the state general fund, and eighty dollars must be placed by the Comptroller General into a special restricted account to be used by the Department of Motor Vehicles to defray the expenses of the Department of Motor Vehicles.

(4) Driving a motor vehicle outside the time limits and route imposed by a restricted license by the person issued that license is a violation of Section 56-1-460.

(I)(1) The period of a driver's license, permit, or nonresident operating privilege suspension for, or denial of issuance of a license or permit to, an arrested person who has no previous convictions for violating Section 56-5-2930, 56-5-2933, or 56-5-2945, or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or any other drug within the ten years preceding a violation of this section, and who has had no previous suspension imposed pursuant to Section 56-5-2950 or 56-5-2951 within the ten years preceding a violation of this section is:

(a) six months for a person who refuses to submit to a test pursuant to Section 56-5-2950; or

(b) one month for a person who takes a test pursuant to Section 56-5-2950 and has an alcohol concentration of fifteen one-hundredths of one percent or more.

(2) The period of a driver's license, permit, or nonresident operating privilege suspension for, or denial of issuance of a license or permit to, an arrested person who has been convicted previously for violating Section 56-5-2930, 56-5-2933, or 56-5-2945, or any other law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or any other drug within the ten years preceding a violation of this section, or who has had a previous suspension imposed pursuant to Section 56-5-2950 or 56-5-2951 within the ten years preceding a violation of this section is:

(a) for a second offense, nine months if he refuses to submit to a test pursuant to Section 56-5-2950 or two months if he takes a test pursuant to Section 56-5-2950 and has an alcohol concentration of fifteen one-hundredths of one percent or more;

(b) for a third offense, twelve months if he refuses to submit to a test pursuant to Section 56-5-2950 or three months if he takes a test pursuant to Section 56-5-2950 and has an alcohol concentration of fifteen one-hundredths of one percent or more; and

(c) for a fourth or subsequent offense, fifteen months if he refuses to submit to a test pursuant to Section 56-5-2950 or four months if he takes a test pursuant to Section 56-5-2950 and has an alcohol concentration of fifteen one-hundredths of one percent or more.

(J) A person's driver's license, permit, or nonresident operating privilege must be restored when the person's period of suspension under subsection (I) has concluded, even if the person has not yet completed the Alcohol and Drug Safety Action Program in which he is enrolled. After the person's driving privilege is restored, he must continue the services of the Alcohol and Drug Safety Action Program in which he is enrolled. If the person withdraws from or in any way stops making satisfactory progress toward the completion of the

Alcohol and Drug Safety Action Program, the person's license must be suspended until the completion of the Alcohol and Drug Safety Action Program. A person must be attending or have completed an Alcohol and Drug Safety Action Program pursuant to Section 56-5-2990 before his driving privilege can be restored at the conclusion of the suspension period.

(K) When a nonresident's privilege to drive a motor vehicle in this State has been suspended under the provisions of this section, the department must give written notice of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license or permit.

(L) The department must not suspend the privilege to drive of a person under the age of twenty-one pursuant to Section 56-1-286 if the person's privilege to drive has been suspended under this section arising from the same incident.

(M) A person whose driver's license or permit is suspended pursuant to this section is not required to file proof of financial responsibility.

(N) An insurer may not increase premiums on, add surcharges to, or cancel the automobile insurance of a person charged with a violation of Section 56-1-286, 56-5-2930, 56-5-2933, or 56-5-2945, or another law of this State or another state that prohibits a person from driving a motor vehicle while under the influence of alcohol or any other drug based solely on the violation unless he is convicted of the violation.

(O) The department must administer the provisions of this section and must promulgate regulations necessary to carry out its provisions.

(P) If a person does not request an administrative hearing within the thirty-day period as authorized pursuant to this section, the person may file with the department a form after enrolling in a certified Alcohol and Drug Safety Action Program to apply for a restricted license. The restricted license permits him to drive only to and from work and his place of education and in the course of his employment or education during the period of suspension. The restricted license also permits him to drive to and from Alcohol and Drug Safety Action Program classes or a court-ordered drug program. The department may issue the restricted license at any time following the suspension upon a showing by the individual that he is employed or enrolled in a college or university, that he lives further than one mile from his place of employment, place of education, the location of his Alcohol and Drug Safety Action Program classes, or the location of his court-ordered drug program, and that there is no adequate public transportation between his residence and his place of employment, his place of education, the location of his Alcohol and Drug Safety Action Program classes, or the location of his court-ordered drug program. The department must

designate reasonable restrictions on the times during which and routes on which the individual may drive a motor vehicle. A change in the employment hours, place of employment, status as a student, status of attendance of Alcohol and Drug Safety Action Program classes, status of his court-ordered drug program, or residence must be reported immediately to the department by the licensee. The route restrictions, requirements, and fees imposed by the department for the issuance of the restricted license issued pursuant to this item are the same as those provided in this section had the person requested an administrative hearing. A restricted license is valid until the person successfully completes a certified Alcohol and Drug Safety Action Program, unless the person fails to complete or make satisfactory progress to complete the program.”

### **Incident site and breath test site videotaping**

SECTION 11. Section 56-5-2953 of the 1976 Code is amended to read:

“Section 56-5-2953. (A) A person who violates Section 56-5-2930, 56-5-2933, or 56-5-2945 must have his conduct at the incident site and the breath test site video recorded.

(1)(a) The video recording at the incident site must:

(i) not begin later than the activation of the officer’s blue lights;

(ii) include any field sobriety tests administered; and

(iii) include the arrest of a person for a violation of Section 56-5-2930 or Section 56-5-2933, or a probable cause determination in that the person violated Section 56-5-2945, and show the person being advised of his Miranda rights.

(b) A refusal to take a field sobriety test does not constitute disobeying a police command.

(2) The video recording at the breath test site must:

(a) include the entire breath test procedure, the person being informed that he is being video recorded, and that he has the right to refuse the test;

(b) include the person taking or refusing the breath test and the actions of the breath test operator while conducting the test; and

(c) also include the person’s conduct during the required twenty-minute pre-test waiting period, unless the officer submits a sworn affidavit certifying that it was physically impossible to video record this waiting period.



(3) The video recordings of the incident site and of the breath test site are admissible pursuant to the South Carolina Rules of Evidence in a criminal, administrative, or civil proceeding by any party to the action.

(B) Nothing in this section may be construed as prohibiting the introduction of other relevant evidence in the trial of a violation of Section 56-5-2930, 56-5-2933, or 56-5-2945. Failure by the arresting officer to produce the video recording required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56-5-2930, 56-5-2933, or 56-5-2945 if the arresting officer submits a sworn affidavit certifying that the video recording equipment at the time of the arrest or probable cause determination, or video equipment at the breath test facility was in an inoperable condition, stating which reasonable efforts have been made to maintain the equipment in an operable condition, and certifying that there was no other operable breath test facility available in the county or, in the alternative, submits a sworn affidavit certifying that it was physically impossible to produce the video recording because the person needed emergency medical treatment, or exigent circumstances existed. In circumstances including, but not limited to, road blocks, traffic accident investigations, and citizens' arrests, where an arrest has been made and the video recording equipment has not been activated by blue lights, the failure by the arresting officer to produce the video recordings required by this section is not alone a ground for dismissal. However, as soon as video recording is practicable in these circumstances, video recording must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the video recording based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer's failure to produce the video recording.

(C) A video recording must not be disposed of in any manner except for its transfer to a master recording for consolidation purposes until the results of any legal proceeding in which it may be involved are finally determined.

(D) SLED is responsible for purchasing, maintaining, and supplying all necessary video recording equipment for use at the breath test sites. SLED also is responsible for monitoring all breath test sites to ensure the proper maintenance of video recording equipment. The Department of Public Safety is responsible for purchasing, maintaining, and supplying all videotaping equipment for use in all law enforcement vehicles used for traffic enforcement. The Department of Public Safety also is responsible for monitoring all law enforcement vehicles used for

traffic enforcement to ensure proper maintenance of video recording equipment.

(E) Beginning one month from the effective date of this section, all of the funds received in accordance with Section 14-1-208(C)(9) must be expended by SLED to equip all breath test sites with video recording devices and supplies. Once all breath test sites have been equipped fully with video recording devices and supplies, eighty-seven and one-half percent of the funds received in accordance with Section 14-1-208(C)(9) must be expended by the Department of Public Safety to purchase, maintain, and supply video recording equipment for vehicles used for traffic enforcement. The remaining twelve and one-half percent of the funds received in accordance with Section 14-1-208(C)(9) must be expended by SLED to purchase, maintain, and supply video recording equipment for the breath test sites. Funds must be distributed by the State Treasurer to the Department of Public Safety and SLED on a monthly basis. The Department of Public Safety and SLED are authorized to carry forward any unexpended funds received in accordance with Section 14-1-208(C)(9) as of June thirtieth of each year and to expend these carried forward funds for the purchase, maintenance, and supply of video recording equipment. The Department of Public Safety and SLED must report the revenue received under this section and the expenditures for which the revenue was used as required in the department's and SLED's annual appropriation request to the General Assembly.

(F) The Department of Public Safety and SLED must promulgate regulations necessary to implement the provisions of this section.

(G) The provisions contained in Section 56-5-2953(A), (B), and (C) take effect for each law enforcement vehicle used for traffic enforcement once the law enforcement vehicle is equipped with a video recording device. The provisions contained in Section 56-5-2953(A), (B), and (C) take effect for a breath test site once the breath test site is equipped with a video recording device."

### **Breath testing sites**

SECTION 12. Section 56-5-2954 of the 1976 Code is amended to read:

"Section 56-5-2954. The State Law Enforcement Division and each law enforcement agency with a breath testing site is required to maintain a detailed record of malfunctions, repairs, complaints, or other problems regarding breath testing devices at each site. These records must be electronically recorded. These records, including any and all

remarks, must be entered into a breath testing device and subsequently made available on the State Law Enforcement Division web site. The records required by this section are subject to compulsory process issued by any court of competent jurisdiction in this State and are public records under the Freedom of Information Act.”

### **Hearings and proceedings before an Administrative Law Judge**

SECTION 13. Section 1-23-600 of the 1976 Code, as last amended by an act bearing ratification number 215 of 2008, is further amended to read:

“Section 1-23-600. (A) A full and complete record must be kept of all contested cases and regulation hearings before an administrative law judge. All testimony must be reported, but need not be transcribed unless a transcript is requested by any party. The party requesting a transcript is responsible for the costs involved. Proceedings before administrative law judges are open to the public unless confidentiality is allowed or required by law. The presiding administrative law judge must render the decision in a written order. The decisions or orders of administrative law judges are not required to be published but are available for public inspection unless confidentiality is allowed or required by law.

(B) An administrative law judge shall preside over all hearings of contested cases as defined in Section 1-23-310 or Article I, Section 22, Constitution of the State of South Carolina, 1895, involving the departments of the executive branch of government as defined in Section 1-30-10 in which a single hearing officer, or an administrative law judge, is authorized or permitted by law or regulation to hear and decide these cases, except those arising under the Occupational Safety and Health Act, those matters arising under the Consolidated Procurement Code, those matters heard by the Public Service Commission, the Employment Security Commission, the Workers’ Compensation Commission, or other cases or hearings which are prescribed for or mandated by federal law or regulation, unless otherwise by statute or regulation specifically assigned to the jurisdiction of the Administrative Law Court. Unless otherwise provided by statute, the standard of proof in a contested case is by a preponderance of the evidence.

(C) All requests for a hearing before the Administrative Law Court must be filed in accordance with the court’s rules of procedure. Any party that files a request for a hearing with the Administrative Law Court must simultaneously serve a copy of the request on the affected

agency. Upon the filing of the request, the chief judge shall assign an administrative law judge to the case.

(D) An administrative law judge also shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of the State of South Carolina, 1895, or another law, except that an appeal from a final order of the Public Service Commission and the State Ethics Commission is to the Supreme Court or the court of appeals as provided in the South Carolina Appellate Court Rules, an appeal from the Procurement Review Panel is to the circuit court as provided in Section 11-35-4410, an appeal from the Workers' Compensation Commission is to the circuit court as provided in Section 42-17-60, and an appeal from the Employment Security Commission is to the circuit court as provided in Section 41-35-750.

(E) Notwithstanding another provision of law, a state agency authorized by law to seek injunctive relief may apply to the Administrative Law Court for injunctive or equitable relief pursuant to Section 1-23-630. The provisions of this section do not affect the authority of an agency to apply for injunctive relief as part of a civil action filed in the court of common pleas.

(F) Notwithstanding another provision of law, the Administrative Law Court has jurisdiction to review and enforce an administrative process issued by a department of the executive branch of government, as defined in Section 1-30-10, such as a subpoena, administrative search warrant, cease and desist order, or other similar administrative order or process. A department of the executive branch of government authorized by law to seek an administrative process may apply to the chief administrative law judge or his designee to issue or enforce an administrative process. A party aggrieved by an administrative process issued by a department of the executive branch of government may apply to the chief administrative law judge for relief from the process as provided in the Rules of the Administrative Law Court.

(G)(1) This subsection applies to timely requests for a contested case hearing pursuant to this section of decisions by departments governed by a board or commission authorized to exercise the sovereignty of the State.

(2) A request for a contested case hearing for an agency order stays the order. A request for a contested case hearing for an order to revoke or suspend a license stays the revocation or suspension. A request for a contested case hearing for a decision to renew a license for an ongoing activity stays the renewed license, the previous license remaining in effect pending completion of administrative review. A request for a contested case hearing for a decision to issue a new

license stays all actions for which the license is a prerequisite; matters not affected by the request may not be stayed by the filing of the request. Requests for contested case hearings challenging only the amount of fines or penalties must be deemed not to affect those portions of orders imposing substantive requirements.

(3) The general rule of subsection (G)(2) does not stay emergency actions taken by an agency pursuant to an applicable statute or regulation.

(4) After a contested case is initiated before the Administrative Law Court, any party may move before the presiding administrative law judge to lift the stay imposed pursuant to this subsection.

(5) A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court, the court of appeals, or in cases when Section 1-23-610(A) applies, the appropriate board or commission.

(6) Nothing contained in this subsection constitutes a limitation on the authority of the Administrative Law Court to impose a stay as otherwise provided by statute or by rule of court.

(H) If a final order of the Administrative Law Court is not appealed in accordance with the provisions of Section 1-23-600, upon request of a party to the proceedings, the Clerk of the Administrative Law Court must file a certified copy of the final order with a clerk of the circuit court, as requested, or court of competent jurisdiction, as requested. After filing, the certified order has the same effect as a judgment of the court where filed and may be recorded, enforced, or satisfied in the same manner as a judgment of that court."

### **Disposition of pending cases**

SECTION 14. Section 1-23-660 of the 1976 Code, as last amended by Act 387 of 2006, is further amended to read:

"Section 1-23-660. There is created within the Administrative Law Court the Division of Motor Vehicle Hearings. The Chief Judge of the Administrative Law Court shall serve as the Director of the Division of Motor Vehicle Hearings. The duties, functions, and responsibilities of all hearing officers and associated staff of the Department of Motor Vehicles are devolved upon the Administrative Law Court effective January 1, 2006. The hearing officers and staff positions, together with the appropriations relating to these positions, are transferred to the Division of Motor Vehicle Hearings of the Administrative Law Court on January 1, 2006. The hearing officers and staff shall be appointed, hired, contracted, and supervised by the chief judge of the court and

shall continue to exercise their present Department of Motor Vehicle functions, duties, and responsibilities under the auspices of the Administrative Law Court as directed by the chief judge and shall perform such other functions and duties as the chief judge of the court shall prescribe. All employees of the division shall serve at the will of the chief judge. The chief judge is solely responsible for the administration of the division, the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff. Notwithstanding another provision of law, the chief judge also has the authority to promulgate rules governing practice and procedures before the division. These rules are subject to review as are the rules of procedure promulgated by the Supreme Court pursuant to Article V of the South Carolina Constitution.

Notwithstanding another provision of law, the hearing officers shall conduct hearings in accordance with Chapter 23 of Title 1, the Administrative Procedures Act, and the rules of procedure for the Administrative Law Court, at suitable locations as determined by the chief judge. For purposes of this section, any law enforcement agency that employs an officer who requested a breath test and any law enforcement agency that employs a person who acted as a breath test operator resulting in a suspension pursuant to Section 56-1-286 or 56-5-2951 is a party to the hearing and shall be served with appropriate notice, afforded the opportunity to request continuances and participate in the hearing, and provided a copy of all orders issued in the action. Representatives of the Department of Motor Vehicles are not required to appear at implied consent, habitual offender, financial responsibility, or point suspension hearings. The hearing officers are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. The State Ethics Commission is responsible for enforcement and administration of those rules and for the issuance of advisory opinions on the requirements of those rules for administrative law judges and hearing officers pursuant to the procedures contained in Section 8-13-230. Notwithstanding another provision of law, an administrative law judge or hearing officer, and the judge's or hearing officer's spouse or guest, may accept an invitation to and attend a judicial-related or bar-related function, or an activity devoted to the improvement of the law, the legal system, or the administration of justice. Appeals from decisions of the hearing officers must be taken to the Administrative Law Court pursuant to the court's appellate rules of procedure. Tape recordings of all hearings will be made part of the record on appeal, along with all evidence introduced at hearings, and copies will be provided to parties to those

appeals at no charge. The chief judge shall not hear any appeals from these decisions.”

### **Habitual offenders**

SECTION 15. Section 56-1-1090 of the 1976 Code, as last amended by Act 381 of 2006, is further amended to read:

“Section 56-1-1090. No license to operate motor vehicles in this State may be issued to an habitual offender nor shall a nonresident habitual offender operate a motor vehicle in this State:

(a) for a period of five years from the date of a final decision by the Department of Motor Vehicles that a person is an habitual offender and if, upon appeal, the finding is sustained by a hearing officer of the Division of Motor Vehicle Hearings unless the period is reduced to two years as permitted in item (c);

(b) until financial responsibility requirements are met;

(c) until, upon petition to the Division of Motor Vehicle Hearings and for good cause shown, the hearing officer may restore to the person the privilege to operate a motor vehicle in this State in accordance with regulations promulgated pursuant to this section, subject to other provisions of law relating to the issuance of driver’s licenses. The petition permitted by this item may be filed after two years have expired from the date of the decision of the department finding the person to be an habitual offender. At this time and after hearing, the hearing officer may reduce the five-year period of item (a) to a two-year period for good cause shown. If the two-year period is granted, it must run from the date of the final decision of the hearing officer. If the two-year period is not granted, no petition may be filed again until after five years have expired from the date of the decision of the hearing officer. However, a petition or court order is not required for the restoration of driving privileges, and the issuance of a license after the five-year waiting period has expired and all financial responsibilities have been fulfilled. The department must promulgate regulations to implement the provisions of this section as provided by Article 1, Chapter 23 of Title 1. The regulations must set forth the terms and conditions under which the habitual offender suspension period may be reduced.”

### **SLED Internet web site**

SECTION 16. Section 56-5-2949 of the 1976 Code is amended to read:

“Section 56-5-2949. In addition to availability under the Freedom of Information Act, any South Carolina Law Enforcement Division policy, procedure, or regulation concerning breath alcohol testing or breath site video recording which is in effect on or after July 1, 2000, must be made publicly accessible on the SLED Internet web site. A policy, procedure, or regulation may be removed from the SLED web site only after five years from the effective date of the subsequent revision.”

#### **Persons not to be considered for intervention**

SECTION 17. Section 17-22-50 of the 1976 Code, as last amended by Act 92 of 2003, is further amended to read:

“Section 17-22-50. (A) A person must not be considered for intervention if:

(1) he previously has been accepted into an intervention program; or

(2) the person is charged with:

(a) blackmail;

(b) driving under the influence or driving with an unlawful alcohol concentration;

(c) a traffic-related offense which is punishable only by fine or loss of points;

(d) a fish, game, wildlife, or commercial fishery-related offense which is punishable by a loss of eighteen points as provided in Section 50-9-1020;

(e) a crime of violence as defined in Section 16-1-60; or

(f) an offense contained in Chapter 25 of Title 16 if the offender has been convicted previously of a violation of that chapter or a similar offense in another jurisdiction.

(B) However, this section does not apply if the solicitor determines the elements of the crime do not fit the charge.”

#### **Surrender of a driver’s license**

SECTION 18. Section 56-1-365(F) of the 1976 Code is amended to read:

“(F) If the defendant surrenders his license, upon conviction, and subsequently files a notice of appeal, the appeal acts as a supersedeas as provided in Section 56-1-430. Upon payment of a ten-dollar fee and



presentment by the defendant of a certified or clocked-in copy of the notice of appeal, the department shall issue him a certificate which entitles him to operate a motor vehicle for a period of six months after the verdict or plea. The certificate must be kept in the defendant's possession while operating a motor vehicle during the six-month period, and failure to have it in his possession is punishable in the same manner as failure to have a driver's license in possession while operating a motor vehicle."

### **Appeal from a conviction**

SECTION 19. Section 56-1-430 of the 1976 Code is amended to read:

"Section 56-1-430. Upon conviction of an offense making mandatory the suspension or revocation of the driver's license of the person so convicted, an appeal taken from such conviction shall act as a supersedeas so as to preclude for a period of six months from the date of conviction any such suspension or revocation."

### **Child endangerment**

SECTION 20. Section 56-5-2947(A) of the 1976 Code is amended to read:

"(A) A person eighteen years of age or over is guilty of child endangerment when:

(1) the person is in violation of:

- (a) Section 56-5-750;
- (b) Section 56-5-2930;
- (c) Section 56-5-2933; or
- (d) Section 56-5-2945; and

(2) the person has one or more passengers under sixteen years of age in the motor vehicle when the violation occurs.

If more than one passenger under sixteen years of age is in the vehicle when a violation of subsection (A)(1) occurs, the person may be charged with only one violation of this section."

### **Penalties**

SECTION 21. Sections 56-5-2940 and 56-5-3000 are repealed.

### **Severability clause**

SECTION 22. If any section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

### **Savings clause**

SECTION 23. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

### **Time effective**

SECTION 24. This act takes effect at 12:00 p.m. on February 10, 2009.

Ratified the 10<sup>th</sup> day of April, 2008.

Approved the 15<sup>th</sup> day of April, 2008.